

MEMORANDUM

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October 20, 2015

AGENDA ITEM

For Meeting of 10-29-15

To: The Commission
From: Commissioner Lee E. Goodman
Re: Regulatory Relief for Political Parties

In 2014, I convened a forum at the Commission to identify and discuss regulatory issues facing political parties.¹ The event was well attended by representatives of the two major parties, as well as minor parties. At that event, party representatives spoke unequivocally about several counterproductive and unduly burdensome aspects of Commission regulations and called upon the Commission to act to provide meaningful reform.

Meanwhile, a growing consensus of political scientists, policy experts and political practitioners—ranging from the Cato Institute and American Enterprise Institute to the Brennan Center—has recognized both the importance of effective political parties and that legal reform is necessary to strengthen their role in our democracy.² While the Senate and House of Representatives have acted in recent months to strengthen the national party committees financially,³ we at the Commission must do our part to free parties from onerous regulatory burdens that are deterring citizen participation in the political process without providing any significant protection against corruption.

A majority of Commissioners have expressed a commitment to support the political parties as democratic institutions and to address unnecessary regulatory burdens. While there is much talk about the Commission's disagreements on regulatory issues, political party regulatory reform offers the Commission an opportunity to work together in a bi-partisan way to address the concerns of all political parties. I hope that my colleagues will join me in this constructive opportunity to strengthen some of the most grassroots institutions in American politics.

¹ The forum was held on June 4, 2104. See www.fec.gov/press/press2014/news_releases/20140604release.shtml (providing link to audio recording of the forum) and www.fec.gov/press/press2014/news_releases/20140416release.shtml (announcing forum).

² See, e.g., Ian Vandewalker and Daniel I. Weiner, *Stronger Parties: Reforming America's Engines of Participation* (Brennan Center for Justice, 2015) (collecting authority); Neil Reiff and Don McGahn, "A Decade of McCain-Feingold," *Campaigns and Elections* (Apr. 16, 2014); Peter J. Wallison and Joel M. Gora, *Better Parties, Better Government* (American Enterprise Institute, 2009) (collecting authority); Larry J. Sabato and Bruce A. Larson, *The Party's Just Begun: Shaping Political Parties for America's Future* (2d ed.) (Longman, 2002).

³ Consolidated and Further Continuing Appropriations Act, 2015 (permitting national party committees to raise additional funds, subject to higher contribution limits, for new administrative accounts).

Accordingly, I propose that the Commission adopt the attached Resolution and commence drafting a notice of proposed rulemaking addressing several regulatory reforms to strengthen political parties as democratic institutions. The regulatory reforms to be addressed are:

- (1) Party Coordinated Communications—Free political parties to discuss issue advertisements with candidates and republish parts of candidate materials in party materials. Also, permit political parties to distribute volunteer campaign materials without triggering coordination limits.
- (2) Volunteer Activities—Expand political party freedom to engage in volunteer activities such as volunteer mail drives, phone banks, and literature distribution.
- (3) Federal Election Activity—Free political parties to register voters and urge citizens to vote on behalf of state and local candidates free from FEC regulation. Also, allow state and local parties to employ people to engage in state and local get-out-the-vote activities with state funds.

Attachment

**RESOLUTION OF
THE FEDERAL ELECTION COMMISSION
COMMENCING WORK ON A NOTICE OF PROPOSED RULEMAKING
FOCUSED ON STRENGTHENING POLITICAL PARTIES**

WHEREAS, a growing consensus in political science literature, policy experts and political practitioners recognizes the importance of effective political parties as democratic institutions and the advisability of legal reform to enhance political efficacy of political parties; and

WHEREAS, Congress recently passed legislation aimed at strengthening political parties; and

WHEREAS, in 2014, representatives of several political parties attended a forum on political parties at the Commission and advised the Commission that its current regulatory burdens are onerous, unnecessary, and counterproductive to democratic participation; and

WHEREAS, a majority of Commissioners have expressed interest in assisting political parties through regulatory revision; and

WHEREAS, the Commission has not undertaken a rulemaking focused on political parties in over a decade; and

WHEREAS, initiating a rulemaking and receiving public comment on potential revisions to regulations that burden political parties will benefit political parties and the people of the United States;

IT IS RESOLVED THAT the Commission directs the Office of General Counsel to draft a notice of proposed rulemaking, no later than December 30, 2015, proposing the following revisions to Commission regulations for public comment and further Commission consideration:

- (1) Party Coordinated Communications (11 CFR 109.37):
 - a. Delete 11 CFR 109.37(a)(2)(iii) to eliminate mere candidate references from the definition of coordinated communications by political parties, leaving only express advocacy and republished candidate materials as coordinated communications;
 - b. Amend 11 CFR 109.37(a)(2)(i) to permit parties to incorporate parts of candidate campaign materials into party communications, adding the following italicized language “...unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b) *or the campaign materials do not expressly advocate the election of the candidate and are incorporated as a subordinate part of the political party communication.*”;

- c. Amend 11 CFR 109.37(a)(3) to permit candidates to provide political parties, in addition to positions on legislative or policy issues, “*candidate biographical information*” without triggering the conduct prong;
- d. Amend 11 CFR 109.37(a)(3) to permit candidates to provide political parties “*opinion poll results purchased by the candidate or candidate’s authorized political committee*” without triggering the conduct prong, provided the provision of such polling data is treated as a contribution by the candidate’s authorized committee to the political party and allocated pursuant to 11 CFR 106.4(e);
- e. Insert a new provision or subsection in 11 CFR 109.37 clarifying that political parties may use all information obtained from any publicly available source, even if such information is material to the creation, production, or distribution of a party communication, without the use of such information constituting coordination;
- f. Insert a new provision in 11 CFR 109.21 and 11 CFR 109.37 clarifying that costs of political party communications for grassroots campaign materials pursuant to 11 CFR 100.24(c)(4) (e.g., “buttons, bumper stickers, handbills, brochures, posters, and yard signs”) and for Internet communications, that are not public communications under 11 CFR 100.26, are exempt from the definition of party coordinated expenditures.

(2) Party Volunteer Activity (11 CFR 100.87, 100.88, 100.89, 100.47, 100.148, 100.49):

- a. Amend 11 CFR 100.87, 100.147 (with corresponding edits to 11 CFR 100.88(a), 100.48) to clarify that volunteer phone banks sponsored by political parties are campaign materials exempted from the definition of contribution on the same basis as brochures, newsletters, tabloids and similar communications;
- b. Amend 11 CFR 100.87, 100.147(a) (with corresponding edits to 11 CFR 100.88(b), 100.148, 100.89(a), 100.149(a)) to clarify what constitutes volunteer mail by adding the following italicized sentence: “*For purposes of this paragraph, the term direct mail means any mailing(s) performed wholly by a commercial vendor.*”;
- c. Amend 11 CFR 100.87(c) to clarify that a candidate may transfer funds to a political party to engage in volunteer activity benefitting that candidate, by adding the following italicized language at the conclusion of the second sentence: “*...or if the funds originate from an authorized committee.*” (and make corresponding edits to 11 CFR 100.89(c), 100.149(c));
- d. Amend 11 CFR 100.87 in the first paragraph to clarify that all volunteer activities are exempt from the definition of contribution by inserting the following italicized words: “The payment by a state or local committee of a political party of the costs of *any volunteer activity* or of campaign materials ...” and in subparagraph (d) by inserting the following italicized words in the title: “Distribution of materials *and other activities* by volunteers,” and the following language in the first sentence of text: “Such materials are distributed *or such activities are conducted* by volunteers”

(3) Federal Election Activity (11 CFR 100.24):

- a. Amend 11 CFR 100.24(a)(2)(ii) to narrow the circumstances under which party efforts to register voters constitute federal election activity by editing the language of the regulations as follows: “Activity is not voter registration activity ~~solely because if it includes a brief exhortation to register to vote, so long as the exhortation is~~ incidental to a communication, activity, or event.”;
- b. Amend 11 CFR 100.24(a)(3)(ii) to narrow the circumstances under which party efforts to turn out voters to the polls constitute federal election activity by editing the language of the regulations as follows: “Activity is not get-out-the-vote activity ~~solely because if it includes a brief exhortation to vote, so long as the exhortation is~~ incidental to a communication, activity, or event.”;
- c. Amend 11 CFR 100.24(a)(2)(ii), 100.24(a)(3)(ii) to add a new subsection (C) as follows: “*A mailer or phone call urges the election of one or more state or local candidates and discusses the merits of the state or local candidacy, does not mention a federal candidate, and in connection with the state or local candidate message informs the recipient ‘You should vote on November 4 at the Washington Middle School between the hours of 8 am and 6 pm.’*”;
- d. Amend all regulations regarding the payment of party employees with federal funds (including 11 CFR 106.7(c)(1), 106.7(d)(i), (ii), 300.33(d)(1), (d)(2) and others) to clarify that party employees must be paid with federal funds only if they perform activities “in connection with a Federal election,” a well defined term, by conforming the language of all party employee regulations to the language of 52 USC 30101(20)(A)(iv) and the language of 11 CFR 106.7(e)(2) and 100.24(b)(4), by striking everywhere it appears “on Federal election activities or,” a phrase that does not appear in the statute or the apportionment regulation.

IT IS FURTHER RESOLVED THAT the Office of General Counsel may edit these provisions and other affected regulations as necessary to effectuate the substantive intent of this resolution and harmonize other regulatory provisions.

IT IS FURTHER RESOLVED THAT the Commission, in consultation with the Office of General Counsel, will work together and consider other ways to clarify its regulations to accomplish the objective of strengthening political parties, including but not limited to supplemental explanations and justifications, audit standard setting, enforcement policy, and interpretative guidance.